

Anne Johnson Palmer (CSB # 302235)
anne.johnsonpalmer@ropesgray.com
 ROPES & GRAY LLP
 Three Embarcadero Center
 San Francisco, California 94111-4006
 Tel.: (415) 315-6300
 Fax: (415) 315-6350

Peter Welsh (admitted *pro hac vice*)
peter.welsh@ropesgray.com
 Daniel A. Yanofsky (admitted *pro hac vice*)
daniel.yanofsky@ropesgray.com
 ROPES & GRAY LLP
 800 Boylston Street
 Boston, MA 02199-3600
 Tel.: (617) 951-7000
 Fax: (617) 951-7050

Attorneys for the Olaplex Defendants
(listed on signature page)

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

 LESLIE LILIEN, Individually and on
 Behalf of All Others Similarly
 Situated,

 Plaintiff,

 v.

 OLAPLEX HOLDINGS, INC., *et al.*,

 Defendants.

Case No. 2:22-cv-08395-SVW-SKx

**OLAPLEX DEFENDANTS’
 RESPONSE TO NOTICE OF
 SUPPLEMENTAL AUTHORITY**

Hearing Date: October 16, 2023
 Hearing Time: 1:30 p.m.
 Courtroom: 10A
 Judge: Hon. Stephen V. Wilson

1 The Olaplex Defendants¹ respectfully submit this response to Plaintiff's
2 October 30, 2023 Notice of Supplemental Authority ("Notice," ECF No. 152), which
3 cites the Ninth Circuit's recent decision in *In re Facebook, Inc. Securities Litigation*,
4 No. 22-15077, 2023 WL 6857600 (9th Cir. Oct. 18, 2023) ("*Facebook*"). The
5 *Facebook* decision does not support Plaintiff's arguments. Instead, for the reasons
6 discussed below, the decision highlights the types of facts that are absent from the
7 Amended Complaint and that plaintiffs must plead to support a claim that an issuer
8 failed to disclose a risk that had already materialized.

9 The plaintiffs in *Facebook* alleged that the defendant-issuer, a social media
10 platform, had allowed a third party to improperly harvest and use the personal data
11 of over 30 million Facebook users, contrary to Facebook's prior statements regarding
12 third-party access to user data, and in violation of both Facebook's internal policies
13 as well as a consent decree that it had previously entered with the Federal Trade
14 Commission ("FTC"). *Facebook*, 2023 WL 6857600, at *4-6. As a result of
15 Facebook's improper information-sharing practices, the FTC imposed a "record-
16 breaking" \$5 billion penalty on Facebook, which was "almost 20 times greater than
17 the largest privacy or data security penalty ever imposed worldwide" and was "one
18 of the largest penalties ever assessed by the U.S. government for any violation." *Id.*
19 at *3 & n.4; *see also In re Facebook, Inc. Sec. Litig.*, No. 5:18-cv-01725-EJD, ECF
20 No. 142, ¶ 457 (N.D. Cal.).

21 The *Facebook* plaintiffs challenged, among other things, a risk disclosure that
22 "presented the prospect of a breach [of user data] as purely hypothetical when it had
23 already occurred." *Facebook*, 2023 WL 6857600, at *9. The Ninth Circuit
24 emphasized that the federal securities laws do not "create an affirmative duty to
25

26 ¹ The "Olaplex Defendants" are Olaplex Holdings, Inc., JuE Wong, Eric Tiziani,
27 Tiffany Walden, Christine Dagousset, Tricia Glynn, Deirdre Findlay, Janet
28 Gurwitch, Martha Morfitt, David Mussafer, Emily White, Michael White, and Paula
 Zusi.

1 disclose any and all material information” that may be of interest to investors, *id.* at
 2 *8, but held that the *Facebook* plaintiffs adequately pled that this disclosure was
 3 misleading because (i) the statement “directly contradicted what the company knew”
 4 about the alleged “misconduct” when it made the challenged statement, and (ii) the
 5 statement “could be misleading even if the magnitude of the ensuing harm was still
 6 unknown.” *Id.*

7 Here, by contrast, Plaintiff does not allege that any of the challenged
 8 statements “directly contradicted” what the Company knew at the time of the IPO.
 9 See ECF No. 133 at 2, 7, 13, 15-17 (not disputing that any of the challenged
 10 statements were “literally true”). Nor does Plaintiff accuse Olaplex of any
 11 “misconduct”—by violating any law or otherwise—in connection with its prior use
 12 of lilial in one of its products. Plaintiff instead acknowledges that Olaplex complied
 13 with the law by ceasing any sales of product containing lilial in the E.U. and U.K.
 14 before the relevant ban went into effect. See Amended Complaint (“AC,” ECF No.
 15 123) ¶ 139.

16 Moreover, while the Ninth Circuit in *Facebook* observed that disclosure of a
 17 risk may be required even where “the *magnitude* of the ensuing harm” was unknown,
 18 see 2023 WL 6857600, at *9 (emphasis added), Plaintiff fails to allege facts
 19 indicating the *existence* of *any* foreseeable harm that could have resulted from
 20 Olaplex’s prior use of lilial. As is clear from the Amended Complaint and a
 21 document it incorporates by reference (the “SCCS Report,” ECF No. 130-5), lilial
 22 was a common ingredient in cosmetic and other products. AC ¶ 211; SCCS Report
 23 at 12. The E.U.’s 19-month phaseout of lilial was announced over a year before the
 24 IPO, and the SCCS Report was issued two years earlier. AC ¶¶ 4-5, 154. Yet Olaplex
 25 faced no backlash during those two years prior to the IPO. *Id.* ¶¶ 134-36.² Critically,

26
 27 ² Plaintiff again seeks to mischaracterize this as a “truth-on-the-market” defense.
 28 Notice at 2. Not so. The fact that Olaplex faced no backlash during an extended
 period of time after the E.U. phaseout was announced, when the Company had listed

1 moreover, Plaintiff's claims are not based on the mere fact that the E.U. had decided
2 to ban lilial prior to Olaplex's IPO. Plaintiff's counsel confirmed as much during the
3 argument on Defendants' motions to dismiss, arguing that the materiality of the
4 information allegedly omitted from the Offering Documents was not apparent until
5 well after the IPO, when the TikTok videos referenced in the Amended Complaint
6 went viral and affected the market for Olaplex's stock. *See* 10/16/23 Hr'g Tr. 29:16-
7 32:5. Plaintiff does not allege any facts that would explain how Olaplex could have
8 foreseen at the time of the IPO that the lilial ban would have this supposed impact on
9 the Company, driven by these social media influencer TikTok videos.

10 And, in fact, the harm that ultimately occurred decidedly was **not** due to the
11 mere fact of Olaplex's prior use of this ingredient. The social media controversy
12 instead arose from the influencer's false assertions in the TikTok videos that
13 Olaplex's product specifically was being banned because of some supposed finding
14 it was actually reprotoxic. *See* AC ¶¶ 15, 214, 217, 240-41, 279. Thus, unlike in
15 *Facebook*, where the eventual public disclosure of "one of the largest data leaks in
16 the social network's history" presumably would have some foreseeable impact on the
17 issuer when the matter fully came to light (*see* 2023 WL 6857600, at *5), there was
18 no basis for Olaplex to predict at the time of its IPO that its prior use of a common
19 ingredient would cause any harm to the Company. As the Olaplex Defendants argued
20 in their briefing, for this reason Plaintiff's Amended Complaint is far more analogous
21 to pleadings that courts have dismissed for failure to allege that any risk had
22 materialized at the time of the IPO, or was substantially likely to do so in the future.
23 *See* ECF No. 130-1 at 11-12; ECF No. 138 at 3-4 & n.3; *see also Rubke v. Capitol*
24 *Bancorp Ltd.*, 551 F.3d 1156, 1164 (9th Cir. 2009) (affirming dismissal of Section
25 11 claim because defendants "could not know" about events that occurred after the

26 _____
27 the ingredient on its website and on the product's label, demonstrates that the
28 controversy following the release of the TikTok videos was not foreseeable at the
time of the IPO. *See* Olaplex Defendants' Reply (ECF No. 138) at 3 n.3.

1 challenged statements and thus “could not include a disclaimer” about them); *In re*
2 *Progenity, Inc. Sec. Litig.*, No. 3:20-cv-01683-RBM-AHG, 2023 WL 219345, at *7
3 (S.D. Cal. Jan. 13, 2023) (dismissing Section 11 claim where plaintiffs “fail[ed] to
4 plead anything beyond conclusory assertions to establish that the risk” at issue in that
5 case “had materialized by the time the Registration Statement took effect” or that
6 defendants “knew or reasonably could have known” of the risk at that time).

7 Accordingly, *Facebook* provides no support for Plaintiff’s claims.
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1 Dated: November 6, 2023

Anne Johnson Palmer
ROPES & GRAY LLP

3 By: /s/ Anne Johnson Palmer

4 Anne Johnson Palmer (CSB # 302235)
5 *anne.johnsonpalmer@ropesgray.com*
6 ROPES & GRAY LLP
7 Three Embarcadero Center
8 San Francisco, California 94111-4006
9 Tel.: (415) 315-6300
10 Fax: (415) 315-6350

11 Peter Welsh (admitted *pro hac vice*)
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14 *daniel.yanofsky@ropesgray.com*
15 ROPES & GRAY LLP
16 Prudential Tower
17 800 Boylston Street
18 Boston, MA 02199-3600
19 Tel.: (617) 951-7000
20 Fax: (617) 951-7050

21 *Attorneys for Defendants*
22 *Olaplex Holdings, Inc., JuE Wong, Eric*
23 *Tiziani, Tiffany Walden, Christine*
24 *Dagousset, Tricia Glynn, Deirdre*
25 *Findlay, Janet Gurwitch, Martha Morfitt,*
26 *David Mussafer, Emily White, Michael*
27 *White, and Paula Zusi*
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